

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rainbow Honolulu)	File Number: EB-03-HL-072
)	
Licensee of Station WPKK857)	NAL/Acct. No. 200432860001
Honolulu, Hawaii)	FRN 0006081673

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 2, 2004

By the Enforcement Bureau, Honolulu Resident Agent Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Rainbow Honolulu, licensee of radio station WPKK857 in Honolulu, Hawaii, has apparently repeatedly violated Section 1.903(a) of the Federal Communications Commission's ("FCC") Rules by operating on an unauthorized frequency and operating at an unauthorized location.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Rainbow Honolulu is apparently liable for a forfeiture in the amount eight thousand dollars (\$8,000).

II. BACKGROUND

2. On August 13, 2003, the Honolulu Resident Agent Office received a complaint alleging interference to licensed land mobile radio station communications on 461.200 MHz. The complainant stated that unidentified foreign language communications had disrupted their operations since February 2003. Agents from the Honolulu Resident Agent Office monitored unidentified Vietnamese language communications on 461.200 MHz between August 13, 2003, and August 22, 2003, at various times. On August 18, 2003, agents from the Honolulu Resident Agent Office employed mobile direction finding techniques to positively determine that the source of the transmissions was a transmitter installed at Iolani Court Plaza, 2499 Kapiolani Blvd, Honolulu. The agents contacted Delta Communications ("Delta"), a radio service company, who confirmed that their customer, Rainbow Honolulu, was operating on 461.200 MHz, utilizing a transmitter installed at Iolani Court Plaza. Delta further stated that Rainbow Honolulu is the licensee of radio station WPKK857. On August 22, 2003, the Honolulu Resident agent again determined that Rainbow was operating without authority on the frequency 461.200 MHz and from the unauthorized location at Iolani Court Plaza.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply

¹ 47 C.F.R § 1.903(a).

² 47 U.C.S. § 503(b).

substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

4. Section 1.903(a) of the Rules states "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part..." Radio station license WPKK857, issued to Rainbow Honolulu on January 19, 2002, authorizes operation on the frequencies 464.650 and 468.650 MHz with a transmitter location specified as 1600 Ala Moana Blvd., Honolulu. Rainbow Honolulu does not hold any authorization to operate on 461.200 MHz, and is not authorized to operate a transmitter at Iolani Court Plaza, 2499 Kapiolani Blvd., Honolulu.

5. Based on the evidence before us, we find that Rainbow Honolulu repeatedly violated Section 1.903(a) of the Rules by operating on an unauthorized frequency and operating at an unauthorized location. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement")⁶, and Section 1.80 of the Commission's Rules,⁷ the base forfeiture amount for operating on an unauthorized frequency is \$4,000 and for operating at an unauthorized location is \$4,000. Accordingly, the total base forfeiture in this instance is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act⁸, which includes the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, an \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Rainbow Honolulu is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violations of Section 1.903(a) of the Rules.⁹

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...."" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a).

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Rainbow Honolulu SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the NAL/Acct. No. and FRN referenced in the caption.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington, D.C. 20554, Attn: Enforcement Bureau – Spectrum Enforcement Division and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9837 2260, Return Receipt Requested, to Rainbow Honolulu, 308 Ainakea Way Apt 035, Honolulu, Hawaii 96815.

FEDERAL COMMUNICATIONS COMMISSION

John R. Raymond
Resident Agent, Honolulu Office

Enclosure: Attachment A

¹⁰ See 47 C.F.R. § 1.1914.